IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CUSAP No.12 of 2007

Date of Decision: 6.12.2007

Dev Steel Forging Industries

..Appellant.

Vs.

The Commissioner of Customs

..Respondent.

CORAM : HON'BLE MR.JUSTICE M.M.KUMAR

HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: Mr.Sudhir Malhotra, Advocate for the appellant.

M.M.KUMAR, J.

This is an appeal filed under Section 130(1) of the Customs Act, 1962 (for brevity `the Act') for setting aside order dated 5.9.2007 (A/6) passed by the Custom Excise and Service Tax Appellate Tribunal, Principal Bench, Delhi dismissing the appeal filed by the appellant on account of non compliance of the order dated 3.7.2007 which was passed under Section 129 (B) of the Act and Financial Act, 1994 relating to service tax. On 3.7.2007 vide Annexure A/5 the appellant was asked to deposit an amount of Rs.2-1/2 lacs being half of the amount due as pre deposit for hearing of the appeal on merits. When the amount was not deposited, the appeal has been dismissed by the Tribunal for non compliance (Annexure A/6).

Mr.Sudhir Malhotra, learned counsel for the appellant has submitted that he may be permitted to deposit the amount as per directions issued by the Tribunal in its order dated 3.7.2005 (Annexure A/5) and the Tribunal be directed to hear the appeal on merits after deposit.

After hearing the learned counsel, we are of the considered view that no interference of this Court would be warranted at this stage in

the discretion exercised by the Tribunal requiring the petitioner to deposit 50% of the amount due. The Tribunal has rightly held that it was not a fit case for total waiver of pre-deposit. Accordingly, it has been held that 1/2 of the amount was deposited by 5.9.2007. The discretion exercised by the Tribunal is based on relevant considerations and there is no jurisdictional error. The Tribunal would be competent to reverse the findings of fact recorded by the Commissioner (Appeals) wherein the demand of Rs.5,68,134 under Section 28(1) of the Act, has been confirmed.

However, in view of the fact that an offer has been made for deposit of the amount as per directions issued by the Tribunal in its order dated 3.7.2007 (Annexure A/5), we deem it just and appropriate to accept the prayer. Let the amount as per orders dated 3.7.2007 be deposited by 20.12.2007. The afore-mentioned course has been adopted because right of appeal is a valuable right and the findings of fact can be considered only by the Tribunal. If the aforementioned amount is deposited then order dated 5.9.2007 passed by the Tribunal dismissing the appeal for want of deposit shall be deemed to be nonest and the appeal shall be heard on merits. It is further made clear that if the amount is not deposited by 20.12.2007 then the order dated 3.7.2007 shall continue to operate.

The petition stands disposed of in the above terms.

(M.M.Kumar)
Judge

(Rakesh Kumar Jain)
Judge

6.12.2007
Meenu